IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1795 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

==========

MADHAV BHAGWAN TIWARI [TRANSPOSED AS RESP.NO.8.]

Versus

KAMLABEN WD/O SUNDERLAL SHIV- LAL

Appearance:

MR RAJNI H MEHTA for appellants.

MR MC BHATT for Respondents No. 1-6

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE K.A.PUJ

Date of decision: 10/04/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

The appellants, owner and driver of motor truck No. GTB 5939 and the Insurance Company, with whom the said truck was insured, have filed joint appeal under Section 110-B of the Motor Vehicles Act, 1939, (to be referred to as "the Act") against the judgment and award dated March 30, 1988, passed by the Motor Accident Claims Tribunal No.2 (Main), Ahmedabad in MACT Case No. 80 of 1985, by which judgment and award the Tribunal awarded a sum of Rs. 2,60,000/= in favour of the respondent-claimants with interest at the rate of 12 per cent from the date of the petition till realisation with proportionate costs for the death caused of the deceased Sunderlal Shivlal in the accident which took place on February 15, 1985 at about 10.15 a.m. due to rash and negligent driving of the driver of truck No. GTB 5939.

2. The respondent-claimants, by filing cross-objections under Rule 22 of Order 41 of the Code of in First Appeal No. 1795 of 1988, have filed claimed enhanced compensation of Rs. 40,000/=.

3. Deceased, Sunderlal Shivlal along with one Laljibhai Versi Vaghri were riding on one bicycle on February 15, 1985 at about 10.15 a.m. on the western edge of Saraspur Overbridge in the City of Ahmedabad. At that time, motor truck No. GTB 5939 which was driven by the respondent No.8 in a rash and negligent manner, came from behind and dashed with one camel cart damaging badly the said camel cart and proceeded in the same direction and dashed with the cycle of deceased Sunderlal and injured Lalji Versi Vaghri. Due to the dashing of the motor truck with the bicycle, deceased Sunderlal sustained serious injuries and succumbed to the injuries. The heirs and legal representatives of deceased Sunderlal filed Motor Accident Claims Tribunal Case No. 80 of 1985 claiming compensation of Rs. 3,00,000/= for the untimely death of the deceased Sunderlal. The injured Laljibhai had also filed MACT Case No. 26 of 1986 for which we are not concerned in this appeal.

4. On the pleadings of the parties, the Tribunal had raised common issues at Exhibit 38. The Tribunal, on appreciation of oral as well as documentary evidence, came to the conclusion that the driver of the truck No. GTB 5939 was solely responsible for causing the accident. It was also held that at the time of the accident the truck was insured with the appellant Insurance Company. With regard to the quantum of compensation, the Tribunal awarded the amount of Rs. 2,60,000/= in favour of the respondent-claimants for the death caused of the deceased

Sunderlal due to rash and negligent driving of the driver of the truck which has given rise to the filing of the appeal as well as cross-objections by the respondent-claimants.

5. Heard learned counsel for the parties and the counsel for the parties have taken us through the entire Record and Proceedings of the appeal. Having perused the Record and Proceedings and having heard the learned counsel for the parties at length, we are of the opinion that the finding of the Tribunal, that the driver of the truck, i.e., respondent No.8 was solely negligent in causing the accident, is eminently just and proper and deserves to be confirmed.

6. With regard to the quantum of compensation, counsel for the appellants has vehemently submitted that the Tribunal has awarded compensation on a higher side and therefore the appeal deserves to be partly allowed. In our opinion, the submission of the learned counsel for the appellants does not deserve any merit. The Tribunal had taken into consideration the oral evidence adduced by the claimants and had awarded just and adequate compensation for the untimely death of the deceased Sunderlal. By no stretch of imagination, it can be held that the award of the tribunal is on a higher side. We do not find any merit in the appeal filed by the owner and the Insurance Company and therefore the First Appeal No. 1795 of 1988 deserves to be dismissed with no order as to costs. Learned counsel, Mr. M.C. Bhatt has submitted that the Tribunal erred in not awarding the full amount claimed in the petition. In our opinion, the Tribunal, taking into consideration overall the situation of the case and the income of the deceased, had awarded just compensation. There is no scope for enhancing the amount of compensation and therefore we do not find any merit in the cross-objections. As a result of the foregoing discussion, the First Appeal No. 1795 of 1988 and the cross-objections are dismissed with no order as to costs. The judgment and award of the Tribunal is confirmed.

7. The Office is directed to return the Record and Proceedings of MACT Case No. 80 of 1985 forthwith to the Tribunal.

[M.H. Kadri, J.]

rmr. [K.A. Puj, J.]